On subsequent discovery, the observations of Lopes L.J. in *Pearce* v. *Foster*[4] as follows are pertinent: —

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

In my judgment, no employer in his right senses, if he knew the facts, even if he were an incurable optimist, could have failed to take note of the fact that his interests were being undermined.

I accordingly find that there was ample justification for the course taken by the defendants.

I have found, however, that, on the true construction of clause I, the termination of the plaintiff's services was lawful.

Judgment will accordingly be entered in favour of the defendants with costs.

Judgment for the defendants.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson.*

NG HENG KEANG & ORS. v. KIM POH ENG & ANOR.

[O.C.J. (Chua J.) November 24, 1976]
[Singapore — Suit No. 1307 of 1973]

Landlord and Tenant — Rent-controlled premises — Increase in rent — Claim of sub-tenancy — Claim for refund of excess rent paid — Whether there was tenancy or licensor-licensee relationship.

Premises No. 117, Telok Ayer Street, Singapore, is a coffee shop operated by the defendants. The premises are rent-controlled and rented by the defendants. Each of the plaintiffs rented a stall in the coffee shop for a certain sum per month and they carried on their business there as food sellers.

They contended, *inter alia,* that when they went to the coffee shop early in the morning of March 29, 1973, as they usually did, to prepare food for their business they were refused entry by the defendants with the result that they could not do any business. They alleged that they were locked out because they had refused to pay the increased rents which the defendants had demanded on March 28, 1973. They had not carried out any business in the coffee shop since. Evidence indicated that on July 21, 1973, the defendants had given the plaintiffs one month's notice to terminate their licence and to remove their foodstalls and chattels at the termination of their licence.

One of the main issues was whether the plaintiffs were tenants of the defendants or were merely licensees.

Held, allowing the defendants' counterclaim: (1) in determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee, the intention of the parties is the paramount consideration;

(2) in this case, there was no intention to create the relationship of landlord and tenant and not one of the plaintiffs had been granted exclusive possession. All that each of the plaintiffs had was a licence.

Case referred to:-

(1) *Cobb* v. *Lane* [1952] 1 All E.R. 1199 at p. 1202.

CIVIL SUIT.

L.M. Ong for the plaintiffs.

Andrew Ee for the defendants.

Chua J.: The plaintiffs' claim is

"1. for a declaration:—

(i) that the 1st, 2nd, 3rd and 4th plaintiffs and each of them were at the material time sub-tenants of the defendants;

(ii) that the said premises known as No. 117 Telok Ayer Street, Singapore 1 were and are protected premises within the meaning of the Control of Rent Act (Cap. 266) of 1970;

(iii) and that the plaintiffs and each of them were sub-tenants under the provisions of the said Act;

(iv) that the monthly rent hitherto paid by the plaintiffs and each of them to the defendants were illegal rent and that the plaintiffs and each of them were and are entitled to the refund of the excess rent paid by each of them during the period of their respective sub-tenancies.

2. Or alternatively for a declaration:—

(i) that the 1st, 2nd, 3rd and 4th plaintiffs and each of them were licensees of the defendants whose licences or respective licences have not been revoked by the service of any notice or reasonable notice or notices;

(ii) that the denial and exclusion of the plaintiffs and each of them and their respective servants from entering into the said premises was wrongful;

3. And the 1st, 2nd, 3rd and 4th plaintiffs and each of them claim against the defendants for special and general damages."

The short facts are these. Premises No. 117 Telok Ayer Street, Singapore, is a coffee shop operated by the first and second defendants, under the style of "Eng Seng" after the death of Tan Eng Kwan the husband of the first defendant and the father of the second defendant. The premises are rent-controlled premises and rented by the defendants at a rent of $123.75 p.m.

The first and second plaintiffs were partners and they carried on business selling curry rice and pork porridge at Eng Seng coffee shop. They had two stalls in the coffee shop paying $200 p.m. to the defendants.

The third plaintiff was selling cooked noodles at a stall also in the coffee shop and he was paying $120 p.m. to the defendants.

The fourth plaintiff had a stall in the same coffee shop selling cooked chicken rice and paying $260 p.m. to the defendants.

The plaintiffs allege that when they went to Eng Seng coffee shop early in the morning of March 29, 1973, as they usually did, to prepare food for their business they were refused entry by the defendants with the result that they could not do any business. They allege that they were locked out because they had refused to pay the increased rents which the defendants had demanded on March 28, 1973. They had not carried out any business in Eng Seng coffee shop since.

The first main question for consideration is whether the four plaintiffs were tenants of the defendants or were merely licensees.

Premises No. 117 Telok Ayer St. was a coffee shop as far back as 1949 operated by Seng Yee Kim under the name of "Teng Juan". The first and second

plaintiffs said that they rented two stall spaces from Seng Yee Kim in 1949 for $50 p.m. for the two spaces. The first plaintiff said he was the one who negotiated with Seng Yee Kim and that it was agreed that he could keep renting the stalls for as long as he liked and that he could enter the premises at all times of the day and night and for this purpose he was given three keys to the premises. They arranged between themselves that they would take turns to sleep in the premises, so that one of them could open the back door for the other to enter at 3.30 a.m. every morning except Sundays. This arrangement continued when the coffee shop was taken over by Tan Eng Kwan in 1956. In 1966 a watchman was engaged by the first, second and third plaintiffs to sleep on the premises and to open the back door at 3.30 a.m. The fourth plaintiff contributed to the salary of the watchman from 1972.

The third plaintiff said that he started to sell noodles at Eng Seng Coffee shop in January, 1960.

The fourth plaintiff said that he started to sell chicken rice at Eng Seng coffee shop on August 1, 1972.

All the plaintiffs said that they did their cooking in the kitchen of the coffee shop at the places allotted to them. They all admitted that they were selling food in the coffee shop under an Eating House Licence held by the coffee shop.

The evidence adduced by the defendants was to this effect. Tan Eng Kwan took over the coffee shop at 117 Telok Ayer Street in 1956. Some structural alterations were made to the premises and this took one month. During the alterations no business was carried on in Eng Seng coffee shop and no food stalls were operating there. Eng Seng coffee shop started to do business after the alterations were carried out. The evidence of Koh Teong Ngum (DW1) that alterations were carried out at 117 Telok Ayer Street in 1956 is supported by the evidence of Mohamed Salleh bin Yusof (DW2), a clerical assistant in the Ministry of the Environment. After Eng Seng coffee shop had carried on business for one month the first and second plaintiffs came and saw Tan Eng Kwan and applied for spaces for two stalls. Tan Eng Kwan agreed to let them have the spaces for $140 p.m. including water and light. The first and second plaintiffs were allowed to cook in the kitchen and their customers could use the tables and chairs in the coffee shop. The first and second plaintiffs were not allowed to sleep in the premises. At the beginning the hours of the coffee shop were 4 a.m. to 2 a.m. The second plaintiff would come to the coffee shop at 4 a.m. to do his cooking when the coffee shop opened for business and the first plaintiff would come at 5 a.m. The first or second plaintiff was not given any key to the premises. In 1960 the hours of business of Eng Seng coffee shop were changed to 5 a.m. to 1 a.m. Then the second plaintiff would come to the coffee shop at 4 a.m. and wake up the manager who would open the back door for the second plaintiff to come in and the back door would be closed not locked so that the others could come in. During the time that Lee Pit Choo was the manager of Eng Seng coffee shop up to 1965 no key to the premises was given to either the first plaintiff or the second plaintiff.

The third plaintiff started his stall in Eng Seng coffee shop in 1960. The third plaintiff was then in difficulties as he had no business and Tan Eng Kwan helped him by allowing him to have a stall in the coffee shop to sell *wan tan mee;* he paid nothing for the stall. Two years later he paid $30 towards the water and light bill. The third plaintiff was allowed the same facilities as the first and second plaintiffs. The third plaintiff paid $30 p.m. for 3 years and then $60 for water and light as his business was very good.

Sometime in 1967 a duplicate key to the back door was handed to the second plaintiff by the Assistant Manager of the coffee shop, Koh Tin Mui (DW6). This was a private arrangement between the second plaintiff and Koh Tin Mui. The second plaintiff used to come to the coffee shop at 3 a.m. every morning and Koh Tin Mui used to open the back door for him.

In 1967 Koh Tin Mui was unwell and he gave a duplicate key to the second plaintiff so that the second plaintiff could enter the premises at 1 am. to prepare his food before the coffee shop opened for business at 6 a.m. The second plaintiff would then open the back door for the first plaintiff and the other plaintiffs to enter.

When the plaintiffs engaged the watchman, the watchman would come at 1 a.m. before the coffee shop closed for business and the watchman would open the back door at 3 a.m. for the second plaintiff to come in. This was the position right up to March, 1973.

In August, 1972, the fourth plaintiff started to run his foodstall at Eng Seng coffee shop. The same facilities were granted to him as the other plaintiffs. The fourth plaintiff would come to do his business between 7 a.m. and 8 a.m.

I accept the evidence of the defendants' witnesses Koh Teong Ngum (DW1), Lee Pit Choo (DW4) and Koh Tin Mui (DW6) as they are truthful witnesses. I find that the first and second plaintiffs were not doing their business at Eng Seng coffee shop during the month the coffee shop was renovated. I also find that the first and second plaintiffs negotiated the terms with Tan Eng Kwan before they came to do business at Eng Seng coffee shop. I also find that the key to the premises was not given to the second plaintiff until 1967.

It is clear from the authorities that in determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee, the intention of the parties is the paramount consideration. As Denning L.J. said in *Cobb* v. *Lane*[1] at page 1202:

> "The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

When one examines the evidence that has been adduced it is quite clear in my view that there was no intention to create the relationship of landlord and tenant and that not one of the plaintiffs had been granted exclusive possession. All that each of the plaintiffs had was a licence.

As I have said the plaintiffs alleged that they were locked out on the morning of March 29, 1973,

with the result that they could not prepare the food and they could not do any business that day. The defendants on the other hand denied that they had locked out the plaintiffs. They alleged that none of the plaintiffs turned up on the morning of March 29, 1973, and that they had purposely kept away from the coffee shop that day and thereafter in order to force them to agree to reduce the licence fees. They maintained that the plaintiffs had abandoned their food-stalls.

The evidence adduced by the plaintiffs as to what took place on the morning of March 29 was this.

The watchman Lim Eng Meng (PW5) said that he went to Eng Seng coffee shop as usual before it closed at 1 a.m.; that Koh Tin Mui the Assistant Manager told him that since the first and second plaintiffs would not pay the increased rent they would not be allowed to do business there anymore; that Koh Tin Mui drove him away; that he noticed that the lock of the back door had been changed; that he asked for the key to the new lock but Koh Tin Mui refused to give it to him; that he then left the coffee shop at 1 a.m. and went to the first plaintiff's house to tell him about the incident but the first plaintiff did not answer his knock; that later that morning he went to the first plaintiff's house and reported the incident.

The first plaintiff said that on the afternoon of March 28, 1973, Tan Kong Nam, the manager of Eng Seng coffee shop told him and the other plaintiffs that he (Tan Kong Nam) wanted to increase their rents. When they told Tan Kong Nam that they would not pay the latter threatened to lock the door and change the lock so as to prevent them from coming in to do their business. On March 29 he went to the coffee shop at 3.30 a.m. as usual and the second plaintiff came a short while later. He knocked at the back dook. There was no response and he knocked harder. Koh Tin Mui, the Assistant Manager, came to the door but would not allow him to enter. Koh Tin Mui said that his employer had changed the lock of the door and would not allow the plantiffs to carry on business unless the plaintiffs agreed to pay the increased rent. Subsequently he and the second plaintiff went to the police station where the second plaintiff made a report.

The second plaintiff said that on March 29, 1973, he went to the coffee shop as usual at 3.30 a.m. The first plaintiff was already there. He knocked at the back door but no one came to open the door. He and the first plaintiff then went to the side of the coffee shop and the first plaintiff shook the collapsible gate there. Koh Tin Mui came to the collapsible gate and told them that since they did not agree to pay the increased rent the landlord had changed the padlock and would not allow them to carry on doing business. Koh Tin Mui refused to open the door. Subsequently he suggested to the first plaintiff that a police report be made. The first plaintiff agreed. They went to the police station and he made a report.

The third plaintiff said that on March 29, 1973, he and his son went at 5 a.m. as usual to prepare the food. He saw the fourth plaintiff there. The fourth plaintiff said he had been there since 4 a.m. and had knocked at the back door but no one came to open the door. They waited there until 6.15 a.m. when the coffee shop was opened for business. They entered the coffee shop and spoke to Koh Tin Mui who told them that since they would not agree to pay the increased rent Tan Kong Nam was annoyed and Tan Kong Nam had changed the padlock so that they would not be allowed to do business. They then went out and discussed the matter and decided to make a report at the Central Police Station. At the police station he realised that he had not brought his identity card and his son made the report.

The fourth plaintiff said that on the morning of March 29, 1973, he went as usual to the coffee shop at 3.30 a.m. He went to the back door. He knocked at the door; there was no response. Then he went to the side of the coffee shop and shouted but no one came. At about 5 a.m. the third plaintiff came with his son. He told the third plaintiff what had happened. He and the third plaintiff again shouted. They waited there until the coffee shop was opened for business. He asked Koh Tin Mui why they were not allowed to go into the coffee shop to prepare the food. Koh Tin Mui said his employer had changed the padlock for the purpose of locking them out because they did not agree to pay the increased rent. Koh Tin Mui asked him not to go in. He discussed the matter with the third plaintiff and they decided to make a report at the Central Police Station. They went to the police station and there he made a report.

The evidence adduced by the defendants was this.

Tan Kong Nam in evidence admitted that he wanted to increase the licence fees of the plaintiffs. He denied that he spoke to the plaintiffs about it on March 28, 1973; he said he spoke to them late in February, 1973, and only to the first, second and third plaintiffs and that the increase was to take effect on April 1, 1973. The licence fee of the fourth plaintiff was not due to be increased till May 1, 1973. He denied that he threatened to lock the door if the plaintiffs would not agree to pay the increased licensed fees.

Koh Tin Mui's evidence was that on March 28, 1973, at 6 p.m. he found the lock used to padlock the back door jammed with the key in it. He kept this lock and replaced it with a new lock. At 7.30 p.m. he told the fourth plaintiff of this and told the fourth plaintiff to wake him up when the latter come the following morning. At 12.30 a.m. on March 29 he told the watchman to tell the second plaintiff that he would hand the new key to the second plaintiff the following morning and the watchman left. The next morning no one woke him up. He got up at 5 a.m. to start the fire and at 6 a.m. he opened the coffee shop for business. At 6.05 or 6.10 a.m. the fourth plaintiff came with the third plaintiff's son. They went to their stalls and locked up their drawers. The did not speak to him. They then left the coffee shop. At 11 a.m. that same day the fourth plaintiff came again and sat in the coffee shop and had coffee. The other plaintiffs did not come to the coffee shop that day nor did their employees.

It is also relevant to relate the events that took place after March 29, 1973. The plaintiffs said that after the fourth plaintiff failed to see the proprietor

of the coffee shop on the morning of March 29 to negotiate on behalf of all the plaintiffs for them to return to do business they consulted their solicitors on March 30, 1973, and on that day their solicitors wrote to the coffee shop (AB44) alleging that the plaintiffs had been locked out and requesting that the plaintiffs be given "free access to the ground floor of the said premises at all hours of the day and night to enable them to carry on their business as before", failing which the plaintiffs would take legal proceedings. On April 16, 1973, solicitors for the coffee shop replied (AB36) stating *inter alia*:

"Recently, owing to a number of robberies, our clients decided on tighter security measures and put new locks to the back door of the premises. Our clients regret the slight inconvenience occasioned thereby but deny that there was any intention to exclude your clients. Even before the back door lock was changed, our clients' Kong Nam had informed your clients that Messrs. Eng Seng wished to increase the licence fees for the above stated reasons. Regrettably, your clients could not, or would not, try to understand the position which was forced upon our clients, i.e., increased consumption of light, water and power, and increased P.U.B. rates."

The letter concluded with this paragraph:

"Please let us know within seven days hereof whether your clients will pay the increased fees with effect from May 1, 1973. Otherwise our clients will regrettably have to terminate their licenses, as the present licence fees are nearly swallowed up by P.U.B. charges."

Before the coffee shop replied to the plaintiffs' solicitors letter on March 30, 1973, Mr. Quek Seng Soo (DW5), the Chairman of the Kampong Kapor Community Centre and a member of the Citizens Consultative Committee tried to mediate in the dispute between the plaintiffs and the coffee shop but his efforts were frustrated by the fourth plaintiff who refused to attend the meetings. The other plaintiffs had agreed to the proposals put up by Mr. Quek subject to the fourth plaintiff also agreeing. The defendants agreed to the proposals. The fourth plaintiff would not attend the meetings and would not give an answer whether he would agree to Mr. Quek's proposals which was to pay an increased fee but at a rate less than that originally asked by Tan Kong Nam.

In June, 1973, the plaintiffs commenced the present proceedings.

As I have said the defendants alleged that the plaintiffs had conspired to boycott the coffee shop to force the coffee shop not to raise the licence fees. The plaintiffs alleged that they were not allowed into the coffee shop when they went there early in the morning. The fourth plaintiff said that he went there at 3.30 a.m. and yet he did not meet the first and second plaintiffs who said they were there at about that time.

It is significant to note that not one of the plaintiffs tried to carry on business during the period that the coffee shop itself was open for business. It is also significant to note that the plaintiffs' employees did not turn up for work that day.

The second plaintiff made his police report at 5 a.m.; the third plaintiff's son made his report at 6.50 a.m. and the fourth plaintiff made his at 6.50 a.m. It is odd that all the plaintiffs should meet at about 7 a.m. at the first plaintiff's house including the watchman unless they had pre-arranged to meet there.

From the facts I find that the probabilities are that all the plaintiffs had agreed to refuse to pay the increased fees asked by Tan Kong Nam and they had agreed on a common line of action to force the coffee shop not to increase the licence fees and that action was to boycott the coffee shop so that the business of the coffee shop would be affected. The changing of the lock gave them the opportunity to say that they were locked out. Although the reasons given by the defendants in their solicitors' letter of April 16 for the changing of the lock differ from the reasons given by Koh Tin Mui I nevertheless believe the defendants' story that they did not lock out the plaintiffs on the morning of March 29. I do not believe that the plaintiffs went to the coffee shop early in the morning as alleged by them.

The evidence points to the fact that the plaintiffs had abandoned their stalls. They were no longer interested in carrying on business there any more. They were determined to cause as much trouble to the defendants as they could. They wanted to have "free access to the ground floor of the said premises at all times of the day and night to enable them to carry on their business as before" to which they were not entitled.

In the result the plaintiffs' claim fails and is dismissed with costs.

The defendants counterclaimed for damages against the plaintiffs in the sum of $10,800 made up as follows:

"(1) Being deprived of the use of the stall spaces for 15 months from April 1, 1973, to June 30, 1974, at $580 per month . . . $8,700.

(2) Storage charges for 21 months, from July 1974 to April 30, 1976, for storing the plaintiffs' stalls in the kitchen of No. 117, Telok Ayer St. say at $100 per month . . . $2,100."

The defendants also claim aggravated damages or alternatively punitive damages against the plaintiffs.

The evidence was that after the mediation of Mr. Quek Seng Soo failed the defendants on July 21, 1973, gave one month's notice to the plaintiffs terminating their licence and requesting them to take steps to remove their foodstalls and their other chattels at the termination of their licence. They again wrote to the plaintiffs on July 25, 1973, on September 20, 1973, and on September 14, 1973. The plaintiffs refused to remove their stalls and other chattels, pending the outcome of this litigation, in spite of the defendants giving an undertaking (through their solicitors) that the plaintiffs would be re-instated in the event that they were successful in their suit. Sometime in August, 1974, the defendants removed the stalls and chattels of the plaintiffs and stored them in the kitchen. In September, 1974, the defendants were able to get in new stallholders to operate in the coffee shop. The first, second and third plaintiffs had paid licence fees only up to the end of March, 1973, and the fourth plaintiff up to the end of April. The licence fee of the first and second plaintiffs was $200 p.m.. of the third plaintiff was $120 and the fourth plaintiff was $260.

I allow the defendants' counterclaim as follows: On item (1) — (A) against the first and second plaintiffs $3,000 ($200 p.m. for 15 months); (B) against the third plaintiff $1,800 ($120 p.m. for 15 months); (C)

against the fourth plaintiff $3,640 ($260 p.m. for 14 months).

On item (2) — (A) against the first and second plaintiffs $630 ($30 p.m. for 21 months); (B) against third plaintiff $630; (C) against fourth plaintiff $630.

I do not think that this is a case where aggravated damages or punitive damages should be awarded.

There will therefore be judgment for the defendants on their counterclaim and costs.

Judgment for the defendants.

PUBLIC PROSECUTOR v. M.M. PILLAY

[A.Cr.J. (Wee Chong Jin C.J.) April 20, 1977]
[Singapore — Magistrate's Appeal No. 4 of 1977]

Road Traffic — Restricted zone and licensing — Motor Vehicles (Restricted Zone and Area Licences) Rules 1975 rr. 3 & 8 — Whether ultra vires — Road Traffic Act (Cap. 92) ss. 70 and 90(1).

Under rule 3 of the Motor Vehicles (Restricted Zone and Area Licences) Rules 1975 'No person shall drive a motor vehicle into the restricted zone as described in the First Schedule during restricted hours unless there is in force in respect of such vehicle an area licence issued under these Rules.' The restricted hours at the relevant time of this case were from 7.30 a.m. to 10.15 a.m.

The respondent, on December 11, 1975 at about 8.40 a.m. drove his car into the "restricted zone" without first obtaining an "area licence" by paying the then prescribed fee of $3/-. He was charged for having contravened rule 3. At the trial counsel on his behalf before any evidence was led, raised a preliminary objection to the charge. It was contended on behalf of the accused that the Rules were *ultra vires* in that section 90(1) of the Road Traffic Act did not confer any power on the Minister to make rules to prohibit, except upon payment of a fee, motor vehicles from using any road. The Magistrate accepted this contention and acquitted the respondent. The Public Prosecutor appealed and the sole question for determination was whether or not section 90(1) of the said Act gave power to the Minister to make the Rules.

Held: (1) *prima facie* the purpose of the Rules is not to collect fees but to reduce the number of motor vehicles entering the "restricted zone" in order to ease traffic congestion on the roads within the "restricted zone" during the "restricted hours" and the imposition of a fee for entering the "restricted zone" during the "restricted hours" is the means adopted to achieve the desired purpose and is merely incidental thereto. The Rules were therefore validly made;

(2) the Rules do not prohibit traffic on the road within the "restricted zone" and on their true construction they are rules which regulate traffic into and within the "restricted zone".

The following cases were cited in argument: *Attorney-General for Canada* v. *Hallet & Carey Ltd.* [1952] A.C. 427 (P.C.); *McEldowney* v. *Forde* [1971] A.C. 632 (H.L.); *Russell (Inspector of Taxes)* v. *Scott* [1948] 2 All E.R. 1; *D'Avigdor-Goldsmid* v. *Inland Revenue Commissioners* [1953] 1 All E.R. 403; *Inland Revenue Commissioners* v. *Wolfson* [1949] 1 All E.R. 865; *Birmingham and Midland Motor Omnibus Co. Ltd.* v. *Worcestershire County Council* [1967] 1 W.L.R. 409; *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1920] 1 K.B.D. 64; *Congreve* v. *Home Office* [1976] 1 All E.R. 697; *Padfield & Ors.* v. *Minister of Agriculture, Fisheries and Food & Ors.* [1968] 1 All E.R. 694; *Attorney-General* v. *Wilts United Diaries* (1922) 38 T.L.R. 781.

MAGISTRATE APPEAL.

Tan Teow Yeow (Deputy Public Prosecutor) for the appellant.

J.B. Jeyaretnam for the respondent.

Wee Chong Jin C.J.: On May 10, 1975 the Minister for Communications in exercise of the powers conferred by section 70 and section 90(1) of the Road Traffic Act (hereinafter referred to as "the Act") made the Motor Vehicles (Restricted Zone and Area Licences) Rules, 1975 (hereinafter referred to as "the Rules") which were duly published in the *Government Gazette* and presented to Parliament as required by section 91 of the Act.

The relevant provisions of the Rules read as follows: —

"1. These Rules may be cited as the Motor Vehicles (Restricted Zone and Area Licences) Rules, 1975 and shall come into operation on June 2, 1975.

2. In these Rules, unless the context otherwise requires —

'area licence' means a licence issued in respect of a motor vehicle authorising such vehicles to enter the restricted zone during restricted hours;

'restricted hours' means the period from 7.30 a.m. to 10.15 a.m. daily except on Sundays and public holidays;

'restricted zone' means any road or part thereof within the area described in the First Schedule.

3. No person shall drive a motor vehicle into the restricted zone as described in the First Schedule during restricted hours unless there is in force in respect of such vehicle an area licence issued under these Rules.

5. — (2) The fee for an area licence shall be three dollars per day or sixty dollars per month.

8. The following vehicles shall be exempted from the provisions of these Rules:—

(a) Ambulances;
(b) Fire engines;
(c) Police Vehicles;
(d) Military Vehicles except saloon cars and station wagons;
(e) Motor cycles;
(f) Omnibuses;
(g) Taxis;
(h) Private Cars (School Transport);
(i) Goods vehicles, except passenger cars, station wagons and other passenger vehicles with a seating capacity of less than twelve persons which are licensed as goods vehicles;
(j) Private buses and mini-buses with a seating capacity of twelve or more persons; and
(k) Motor-cars including station wagons and other passenger vehicles, carrying at least four persons at the time of entry into the restricted zone."

The "restricted zone" as demarcated in the First Schedule comprises the heart of our city and it is common knowledge that, prior to the enactment of the Rules, during morning and afternoon peak hours the volume of vehicular traffic entering and leaving the "restricted zone" was such as to cause serious traffic congestion, a problem common to all big cities everywhere. The authorities tackled this problem by the enactment of the Rules which came into operation on June 2, 1975. Seventeen days later, on June 19, 1975, taxis were taken out of the categories of vehicles exempted from the provisions of the Rules. On July 11, 1975 the "restricted hours" were extended from "between 7.30 a.m. to 9.30 a.m." to "between 7.30 a.m. to 10.15 a.m." by amendments to the Rules.

At about 8.40 a.m. on December 11, 1975 the respondent, M.M. Pillay, drove his car into the "restricted zone" without first obtaining an area licence by paying the then prescribed fee of $3. Accordingly he was charged for having contravened rule 3. At